
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
Conexions, LLC d/b/a Conexion Wireless)
)
Petition for Limited Designation as an Eligible)
Telecommunications Carrier in the States of)
Alabama, Connecticut, Delaware, New)
Hampshire, North Carolina, New York,)
Tennessee, the Commonwealth of Virginia,
and the District of Columbia

**PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN THE STATES OF ALABAMA,
CONNECTICUT, DELAWARE, NEW HAMPSHIRE, NORTH CAROLINA, NEW
YORK, TENNESSEE, THE COMMONWEALTH OF VIRGINIA, AND THE DISTRICT
OF COLUMBIA**

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SUMMARY

Conexions, LLC d/b/a Conexion Wireless (“Conexions”) is seeking limited designation as an Eligible Telecommunications Carrier (“ETC”) in the States of Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia (collectively the “Non-Jurisdictional States”) pursuant to Section 214(e)(6) of the Communications Act, solely for purposes of offering services supported by the Universal Service Fund’s (“USF”) Low-Income program. Conexions is a Mobile Virtual Network Operator (“MVNO”) that purchases wireless service on a wholesale basis from Sprint Nextel and Verizon Wireless. The Commission may perform ETC designations for entities not subject to the jurisdiction of a state commission, and the Non-Jurisdictional States have each provided an affirmative statement that it does not exercise jurisdiction over wireless providers for purposes of ETC designation. Accordingly, pursuant to Section 214(e)(6), the Commission has the necessary authority to designate Conexions as an ETC in the Non-Jurisdictional States.

Conexions meets all of the necessary requirements under Section 214(e)(1) for the limited ETC designation requested herein except for the own facilities requirement, from which Conexions has filed a petition seeking forbearance consistent with prior decisions for similarly situated MVNOs. Through its contracts with underlying carriers, Conexions has the ability to offer all of the services and functionalities supported by the USF and set forth in Section 54.101(a) of the Commission’s rules. Section 214(e)(1)(A) of the Act requires an ETC to offer USF-supported services over its own facilities or a combination of its own facilities and the resale of another carrier’s services. Conexions has sought forbearance from enforcement of this facilities requirement to permits its designation as an ETC. Conexions respectfully requests that the Commission promptly approve the instant request for limited ETC designation, along with its

Petition for Forbearance, to enable Conexions to rapidly provide Lifeline services to qualifying customers in the Non-Jurisdictional States.

Designating Conexions as an ETC in the Non-Jurisdictional States will promote the public interest by providing qualifying low-income customers in the Non-Jurisdictional States with lower prices and high-quality wireless services. Many low-income customers in the Non-Jurisdictional States have yet to reap the well-documented benefits of wireless service because of financial constraints, poor credit history, or intermittent employment. Conexions' prepaid service offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. As an ETC, Conexions will be able to provide discounted and affordable services to these consumers who are among the intended beneficiaries of USF support.

Conexions' designation will specifically serve the public interest because of the aggressive pricing plans that Conexions will provide (See Exhibit 1) and because of Conexions unique distribution channels via relationships with small retail stores in low-income neighborhoods that will permit customers to obtain service, phones, and refill minutes without traveling outside their neighborhoods or using a computer.

Conexions' ETC designation for Lifeline service is consistent with precedent and will serve the public interest, and should be granted without delay.

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I. INTRODUCTION

Conexions, LLC, d/b/a Conexion Wireless (“Conexions”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), and Section 54.201 of the rules of the Federal Communications Commission (“FCC” or “Commission”), hereby requests limited designation as an eligible telecommunications carrier (“ETC”) in the States of Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia (collectively the “Non-Jurisdictional States”). Conexions seeks ETC designation in the Non-Jurisdictional States only for purposes of participation in the Universal Service Fund’s (“USF”) Low-Income programs and does *not* seek to participate in the High-Cost support program.

Since the Alabama Public Service Commission, the Connecticut Department of Public Utility Control, the Delaware Public Service Commission, the District of Columbia Public Service Commission, the New Hampshire Public Utilities Commission, the North Carolina Utilities Commission, the New York Public Service Commission, the Tennessee Regulatory Authority and the Virginia State Corporation Commission (collectively, the “State Commissions”) lack jurisdiction to consider Conexions’ request for designation as an ETC, the Commission, under Section 214(e)(6) of the Act, has the necessary jurisdictional authority to consider and grant this request.¹ As more fully described below, Conexions satisfies the requirements for designation as an ETC in the Non-Jurisdictional States and will offer all of the services and functionalities supported by the universal service program throughout its designated service areas in the Non-Jurisdictional States. Grant of Conexions’ request, therefore, will promote the public interest by providing customers in the Non-Jurisdictional States with lower prices and higher quality wireless services through innovative distribution channels.

II. BACKGROUND

A. Conexions Overview

Conexions will provide prepaid wireless telecommunications services to consumers by using the Verizon Wireless and Sprint Nextel networks on a wholesale basis to offer nationwide service. Verizon Wireless and Sprint Nextel (“Sprint/Verizon”) are nationwide carriers that provide wholesale capacity on their wireless network to wireless resellers like Conexions. Pursuant to an existing agreement, Conexions will obtain from Sprint/Verizon network infrastructure and wireless transmission facilities to allow Conexions to operate as a Mobile Virtual Network Operator (“MVNO”), similar to both TracFone and Virgin Mobile, both of whom

¹ See 47 U.S.C. § 214(e)(6).

have been granted ETC status by the Commission.² As an MVNO, Conexions will purchase wireless services from Sprint/Verizon on a wholesale basis for calling and text messaging, package those services into Conexions' own service plans and pricing, and bundle the wireless service with Conexions' handset selection, mobile applications, marketing materials, web interface, and customer service to produce finished wireless service offerings to sell to end-user customers.

Prepaid wireless services that are affordable and easy to use are attractive to lower-income and lower-volume consumers, providing them with access to emergency services and a reliable means of communication that can be used both at home and while traveling to remain in touch with friends and family and for contacting prospective employers. By providing affordable wireless plans and quality customer service to consumers who are otherwise unable to afford them, or were previously ignored by traditional carriers, Conexions will expand the availability of wireless services to many more consumers, which is the principal reason that Congress created the universal service program.

Conexions will offer consumers simple and affordable prepaid calling plans, a variety of prepaid service plans, easy-to-use handsets and high-quality customer service. Conexions' rate plans are described in Exhibit 1. Given its pricing and marketing strategy and the demographics of

² *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation in the States of Alabama, Connecticut, Delaware, Florida, North Carolina, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and Washington D.C.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (“*TracFone ETC Order*”); *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.C.S. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (“*Virgin Mobile Order*”). The Commission had previously granted TracFone forbearance from the facilities requirement for ETC designation, permitting TracFone to offer the supported services via resale only. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (“*TracFone Forbearance Order*”). The *Virgin Mobile Order* contained both the forbearance analysis and ETC designation.

other, similar MVNOs' customers, Conexions anticipates that many of its customers will be from lower-income backgrounds and will not previously have enjoyed access to wireless service because of economic constraints, poor credit history, or sporadic employment. Conexions will not conduct credit checks or require customers to enter into long-term service contracts as a prerequisite to obtaining wireless service. Conexions will allow customers to choose a prepaid plan in which they are charged only for the minutes they use.

Conexions intends to be a price leader in the prepaid marketplace by offering consumers exceptional value, and including highly competitive amounts of voice usage at all price points. Attached hereto as Exhibit 1 is a table of Conexions' proposed Lifeline service plans, showing that Conexions will provide customers with a minimum of 150 free minutes and a free handset. As Exhibit 1 demonstrates, Conexions' Lifeline rate plans will not only allow feature-rich mobile connectivity for qualifying subscribers *at no cost to the subscriber*, but also will bring a variety of rate plans into the reach of Lifeline customers that are comparable in minutes and features to those available to post-paid wireless subscribers – but at low Lifeline rates and without a credit check or a term contract requirement.

Low-income consumers will further benefit from Conexions' service because of Conexions' unique software distribution platform that will allow customers to purchase both phones and refill minutes at small, local stores in neighborhoods where many Lifeline-eligible customers reside. Conexions has existing relationships with over 20,000 such neighborhood retailers. This innovative distribution model is more practical and convenient for existing and potential Lifeline customers than other mechanisms, because it allows customers to obtain phones, service, and minutes without the expense and trouble of traveling to retail locations outside their neighborhoods or to having access to a computer to go online. Conexions' distribution

arrangement will therefore advance the Commission's goals of increasing awareness of and participation in the Lifeline program.

B. Lifeline Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act over 70 years ago. Section 254 of the Act embodies the Commission's historical commitment to the concept of universal service, particularly for low-income consumers. Section 254(b) sets forth the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission to ensure that all consumers, including low-income consumers, have access to telecommunications services at affordable and reasonably comparable rates.³ The Low-Income program was designed to assist low-income individuals obtain quality telecommunications services through the Lifeline and Link-Up programs.⁴ Lifeline support helps defray the monthly costs of telecommunications services for lower-income consumers by providing them with discounts off the monthly cost of telephone service, with additional discounts available for individuals living on tribal lands.⁵ Link-Up provides qualifying low-income consumers with discounts for initial activation costs.⁶

While generally praising the Low-Income program's success, the Commission has noted that "there is more that we can do to make telephone service affordable for more low-income

³ See 47 U.S.C. § 254. Section 254(b)(3) of the Act requires the Commission to determine whether "consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas...have access to telecommunications [services] ..." 47 U.S.C. § 254(b)(3) (emphasis added).

⁴ 47 C.F.R. §§ 54.401 and 54.411.

⁵ 47 C.F.R. §§ 54.400 and 54.401.

⁶ 47 C.F.R. § 54.411(a)(1).

households,” and has specifically targeted the low Lifeline participation rate as one area for improvement.⁷ Commission concerns regarding the underutilization of the Lifeline program have existed since its inception.⁸ According to the most recent estimates issued by the USAC in 2007, only six (6) states had more than 50 percent of eligible low-income households subscribe to the program, while almost half the states had a participation rate of less than 20 percent.⁹ To increase awareness of the program, the Commission has expanded the qualifying criteria and adopted broader outreach guidelines, requiring carriers to better advertise the availability of Lifeline services. Through these actions, the Commission has sought to increase Lifeline participation because “improve[d] participation in the Lifeline program...would increase telephone subscribership and/or make rates more affordable for low-income households.”¹⁰

III. THE COMMISSION HAS AUTHORITY TO PERFORM THE ETC DESIGNATION

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific universal service support.”¹¹ The Act reserves the authority to designate entities as ETCs to state public utility commissions (“PUCs”). Pursuant to Section 214(e)(6), however, the Commission may designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to

⁷ See *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 ¶ 1 (2004) (“*Lifeline Order*”). According to the Commission’s own statistics, only one-third of households eligible for Lifeline assistance actually participated in the program just a few years ago. *Id.*

⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8972 ¶ 370 (1997) (subsequent history omitted) (“*Universal Service First Report and Order*”).

⁹ Information available at: <http://www.usac.org/li/about/participation-rate-information.aspx> (last visited March 9, 2009).

¹⁰ See *Lifeline Order*, 19 FCC Rcd at 8312 ¶ 13.

¹¹ 47 U.S.C. § 254(e).

the jurisdiction of a state commission.”¹² The Commission has established that a carrier must demonstrate that it “is not subject to the jurisdiction of a state commission” before it may consider an application for ETC designation.¹³ The Commission also has stated that any carrier seeking ETC designation from it must provide the Commission with an “affirmative statement” from the state PUC that it lacks jurisdiction to perform the ETC designation.”¹⁴

a) The Alabama Public Service Commission has concluded that it “has no jurisdiction to take action” on ETC petitions, and that “wireless carriers seeking ETC status should pursue their ETC designation request with the FCC.” A copy of the Alabama Public Service Commission’s order is attached as Exhibit A.

b) The Connecticut Department of Public Utility Control has provided a letter clarifying that it lacks jurisdiction to entertain Conexions’ ETC petition. The letter is attached as Exhibit B.

c) The Delaware Public Service Commission has provided a letter clarifying that it lacks jurisdiction to entertain Conexions’ ETC petition. The letter is attached as Exhibit C.

d) The District of Columbia Public Service Commission has provided a letter clarifying that it lacks jurisdiction to entertain Conexions’ ETC petition. The letter is attached as Exhibit D.

¹² See 47 U.S.C. § 214(e)(6).

¹³ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

¹⁴ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 ¶ 113 (2000).

e) The New Hampshire Public Utilities Commission has provided a letter clarifying that it lacks jurisdiction to entertain Conexions' ETC petition. The letter is attached as Exhibit E.

f) The New York Public Service Commission has provided a letter clarifying that it lacks jurisdiction to entertain Conexions' ETC petition. The letter is attached as Exhibit F.

g) The North Carolina Utilities Commission has concluded that "the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC." A copy of the North Carolina Utilities Commission's Order is attached as Exhibit G.

h) The Tennessee Regulatory Authority has concluded that its statutory "lack of jurisdiction over CMRS providers" precludes it from processing ETC petitions. A copy of the Tennessee Regulatory Authority's order is attached as Exhibit H.

i) The Virginia Corporation Commission has concluded that "§ 214(e)(6) of the Act is applicable" to wireless ETC petitions "because [the Virginia Commission] has not asserted jurisdiction over CMRS carriers," and that wireless ETC applicants "should apply to the Federal Communications Commission." A copy of the Virginia Commission's Order is attached as Exhibit I.

Accordingly, for each of the Non-Jurisdiction States, Conexions requests that the Commission exercise its authority under Section 214(e)(6) and determine that Conexions is "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."¹⁵

¹⁵ 47 U.S.C. § 214(e)(6).

IV. CONEXIONS REQUESTS ETC DESIGNATION IN ITS SERVICE AREAS IN THE NON-JURISDICTIONAL STATES FOR PARTICIPATION IN THE LIFELINE PROGRAM

A. Conexions Requests ETC Designation in its Existing Service Area

Consistent with prior orders granting other MVNOs ETC status,¹⁶ Conexions requests ETC designation for its entire service area in Alabama, Connecticut, Delaware, District of Columbia, New Hampshire, North Carolina, New York, Tennessee and Virginia (i.e., the area served by the facilities-based carriers from whom it obtains wholesale service), but excluding any Tribal Areas. Conexions understands that its service area overlaps with several rural carriers' service areas but maintains that the public interest factors described below justify its designation in these service areas, especially since it only seeks ETC designation for purposes of participation in the Lifeline program. Conexions does not seek ETC status in any Tribal Areas.

B. Conexions' Limited ETC Designation Request Only Seeks Authority to Participate in the Lifeline Program

Conexions requests ETC designation in the Non-Jurisdictional States for the sole purpose of participating in the Lifeline program. Conexions does not seek eligibility to receive support from the High Cost support program. As demonstrated herein, the instant request to participate in the Lifeline program is consistent with the Commission's requirements for ETC designation, and would promote the goals of universal service by offering the many benefits of supported services to low-income customers in the Non-Jurisdictional States. As discussed above, Conexions' Lifeline offerings will include many features specifically designed for qualifying low-income customers, who currently lack appealing and affordable options for wireless services, many of whom are therefore unable to subscribe to wireless services.

¹⁶ See *TracFone ETC Order* and *Virgin Mobile Order*, *supra* note 2.

C. The Limited Designation Request is Consistent with Recent Precedent

Conexions' request for designation to participate in the Lifeline program is consistent with the Commission's recent decisions conditionally designating TracFone Wireless and Virgin Mobile as ETCs in several states.¹⁷ In its decisions, the Commission determined that the requests of TracFone and Virgin Mobile satisfied all of the necessary eligibility requirements and that designation would serve the public interest.¹⁸ The Commission specifically noted in the *TracFone* and *Virgin Mobile Orders* that designation of prepaid wireless providers as ETCs will provide a variety of benefits to low-income consumers, including increased consumer choice, high-quality service offerings and mobile access to emergency services on wireless devices.¹⁹

Conexions requests that the Commission expeditiously process its pending ETC applications so that it can quickly join TracFone and Virgin Mobile in providing qualifying lower-income customers with affordable USF-supported wireless services. Designation of prepaid wireless providers such as TracFone, Virgin Mobile and Conexions as ETCs is a significant step towards ensuring that all customers, particularly low-income customers, share in the many benefits associated with access to affordable wireless telecommunications services. During an economic downturn, many existing wireless customers have to forego wireless services because they can no longer afford them. Designation of ETC status to prepaid wireless carriers like TracFone, Virgin Mobile and Conexions should help to close the widening gap for wireless services and provide low-income customers with the significant advantages associated

¹⁷ See *supra* note 2.

¹⁸ See *TracFone ETC Order*, 23 FCC Rcd at 6212-13 ¶ 15; *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38.

¹⁹ See *TracFone ETC Order*, 23 FCC Rcd at 6212-13 ¶ 15; *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38.

with access to wireless services. As noted in a recent study sponsored by the Massachusetts Institute of Technology's Legatum Center for Development and Entrepreneurship and New Millennium Research Council, low-income customers receive significant economic and social benefits from wireless services, including enhanced productivity, increased economic opportunity, and broader access to emergency and safety services.²⁰

V. CONEXIONS SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 214(e)(1) of the Act and Section 54.201(d) of the Commission's rules provide that applicants for ETC designation must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier's services. Applicants also must commit to advertise the availability and rates of such services.²¹ As detailed below, Conexions satisfies each of the above-listed requirements.

A. Conexions is a Common Carrier

CMRS resellers like Conexions are treated as common carriers for regulatory purposes.²²

²⁰ Nicholas P. Sullivan, New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, (April 2008), available at http://newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf.

²¹ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

²² *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A) ("mobile services" providers are common carriers); see also *PCIA Petition for Forbearance for Broadband PCS*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998) ("We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, ... all mobile telephone services *and resellers of such services*." (emphasis added)).

B. Conexions Will Provide the Supported Services Through Resale

As described above, Conexions purchases wireless network services on a wholesale basis from Sprint Nextel and Verizon. Conexions has filed a Petition for Forbearance from application of Section 214(e)(1)(A) of the Act that requires ETCs to offer USF-supported services either using their own facilities or a combination of their own facilities and the resale of another carrier's services ("Petition").²³ As Conexions notes in its Petition, forbearance from the facilities requirement will enable Conexions to advance the deployment of discounted telecommunications services, greatly benefiting its low-income customers. The company requests that the Commission expeditiously approve the Petition to ensure that Conexions can join TracFone and Virgin Mobile in rapidly deploying discounted telecommunications services to qualified Alabama, Connecticut, Delaware, District of Columbia, New Hampshire, North Carolina, New York, Tennessee and Virginia consumers.

C. Conexions Offers All of the Required Services and Functionalities

Through its wholesale arrangements with Sprint Nextel and Verizon, Conexions is able to provide all of the services and functionalities supported by the universal service program under Section 54.101 of the Commission's rules in the Non-Jurisdictional States. Conexions will make these services and functionalities available to any qualifying Alabama, Connecticut, Delaware, District of Columbia, New Hampshire, North Carolina, New York, Tennessee and Virginia customers.

²³ *Petition of Conexions, LLC, for Forbearance Pursuant to 47 U.S.C. § 160 from the Own Facilities Requirement for Eligible Telecommunications Carrier Status*, CC Docket No. 96-45 (filed July 8, 2009); *Comment Sought on Conexions Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, CC Docket No. 96-45, Public Notice, DA 09-1777 (rel. Aug. 10, 2009) ("Conexions Forbearance Petition").

1. Voice Grade Access to the Public Switched Telephone Network

Conexions provides voice grade access to the public switched telephone network (“PSTN”) through the purchase of wholesale CMRS services from Sprint Nextel and Verizon. Bandwidth for this voice-grade access is at minimum between 300 and 3,000 MHz as required by the Commission’s rules.²⁴

2. Local Usage

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage.²⁵ Conexions offers a variety of rate plans that provide its customers with local usage capabilities included within the flat per minute or per month rate. Conexions also commits to complying with any minimum local usage requirements adopted by the FCC in the future.

3. Dual Tone Multi-Frequency Signaling or its Functional Equivalent

Conexions provides dual tone multi-frequency (“DTMF”) signaling to expedite the transmission of call set up and call detail information throughout the network. All wireless handsets offered for sale by the company are DTMF-capable.

²⁴ See 47 U.S.C. § 54.101(a)(1).

²⁵ See e.g., *Farmers Cellular, Inc.*, CC Docket No. 96-45, Memorandum Opinion and Order, 18 FCC Rcd 3848, 3852 ¶ 9 (2003); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589, 9593 ¶ 10 (2002); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48, 52 ¶ 10 (2000).

4. Single-Party Service or its Functional Equivalent

“Single-party service” means that only one party will be served by a subscriber loop or access line during a telephone transmission. Conexions provides single party service to its customers for the duration of each telephone call, and does not provide multi-party (or “party-line”) services.

5. Access to Emergency Services

Conexions provides nationwide access to 911 and E911 emergency services for all of its customers. Conexions also complies with the Commission’s regulations governing the deployment and availability of enhanced 911 compatible handsets. Further, Conexions commits to providing a certification to the Commission for all Non-Jurisdictional States that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support of 911 and E911 service.²⁶ As stated in the Conexions Forbearance Petition, Conexions will also: (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported services; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where Conexions will provide Lifeline service confirming that Conexions provides its customers with 911 and E911 access (or self-certify compliance if, within 90 days of Conexions’ request, a PSAP has not provided the certification and the PSAP has

²⁶ See *Virgin Mobile Order*, 24 FCC Rcd at 3395-96 ¶ 39; *TracFone ETC Order*, 23 FCC Rcd at 6213 ¶ 16.

not made an affirmative finding that Conexions does not provide its customers with access to 911 and E911 service within the PSAP's service area).²⁷

6. Access to Operator Services

Conexions provides all of its customers with access to operator services.

7. Access to Interexchange Services

Conexions' service provides its customers with the ability to make interexchange, or long distance, telephone calls.

8. Access to Directory Assistance

All Conexions customers are able to dial "411" to reach directory assistance services from their wireless handsets.

9. Toll Limitation for Qualifying Low-Income Consumers

Toll limitation allows customers to block the completion of outgoing long distance calls to prevent them from incurring significant long distance charges and risking disconnection. As described above, Conexions provides its wireless service on a prepaid, or pay-as-you-go, basis. Conexions' service, moreover, is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may apply. As the Commission found in the *Virgin Mobile Order*, "the prepaid nature of [a prepaid wireless service provider's] service offering works as an effective toll control."²⁸ The nature of Conexions'

²⁷ See *TracFone Forbearance Order*, 20 FCC Rcd at 15104 ¶ 21; *Virgin Mobile Order*, 24 FCC Rcd at 3386-87 ¶ 12. See also *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Order, 24 FCC Rcd 2375 (2009) (modifying TracFone's certification condition).

²⁸ See *Virgin Mobile Order*, 24 FCC Rcd at 3394 ¶ 34.

service, therefore, mitigates any concerns that low-income customers will incur significant charges for long distance calls resulting in disconnection of their service.

D. Advertising of Supported Services

Conexions will broadly advertise the availability and rates for the services described above using media of general distribution as required by Section 54.201(d)(2) of the Commission's regulations.²⁹ The company will advertise the availability of its services through newspapers, magazines, radio, the Internet and billboards. These advertising campaigns will be specifically targeted to reach low-income customers and promoting the availability of cost-effective wireless services to this neglected consumer segment.

Conexions will supplement these methods of communication to specifically advertise and promote the availability of its Lifeline offerings to qualifying customers throughout the Non-Jurisdictional States. Conexions intends to distribute brochures and posters at various state and local social service agencies to inform customers of the availability of its Lifeline services.

VI. DESIGNATION OF CONEXIONS AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

A. Goals of the Communications Act

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is "to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies" to all citizens, regardless of geographic location or income.³⁰ There is no question that limited designation of Conexions as an ETC in the Non-Jurisdictional States will promote the public interest by providing low-income consumers in the Non-Jurisdictional States with more

²⁹ See 47 C.F.R. § 54.201.

³⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

affordable and higher quality wireless services. Many lower-income consumers have yet to reap the full benefits of the wireless marketplace. Whether because of financial constraints, poor credit or intermittent employment, these consumers often lack access to the benefits that wireless services bring to other consumers.³¹ Designating Conexions as an ETC in the Non-Jurisdictional States will enable it to expand the availability of affordable telecommunications services to qualifying consumers, leading to lower prices and increased choice.³²

The instant request for limited ETC designation must be examined in light of the Act's goal of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—particularly low-income consumers—receive affordable and comparable telecommunications services. Given this context, designating Conexions as an ETC would significantly benefit low-income consumers eligible for Lifeline services in the Non-Jurisdictional States—who are the intended beneficiaries of universal service. The company's participation in the Lifeline program also undoubtedly would increase opportunities for the company to serve these customers with appealing and affordable service offerings.

Designation of Conexions as an ETC also will promote competition and spur other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this neglected consumer segment. Conexions intends to be a price leader in the prepaid marketplace by offering consumers exceptional value, and including highly competitive amounts

³¹ See *supra* note 20.

³² See *TracFone ETC Order*, 23 FCC Rcd at 6212 ¶ 15; *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38; *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20760 ¶ 52 (1996).

of voice usage at all price points. Attached hereto as Exhibit 1 is a table of Conexions' proposed Lifeline service plans, showing that Conexions will provide customers with a minimum of 150 free minutes and a free handset. As Exhibit 1 demonstrates, Conexions' Lifeline rate plans will not only allow feature-rich mobile connectivity for qualifying subscribers *at no cost to the subscriber*, but also will bring a variety of rate plans into the reach of Lifeline customers that are comparable in minutes and features to those available to post-paid wireless subscribers – but at low Lifeline rates and without a credit check or a term contract requirement.

Low-income consumers will further benefit from Conexions' service because of Conexions' unique software distribution platform that will allow customers to purchase both phones and refill minutes at small, local stores in neighborhoods where many Lifeline-eligible customers reside. Conexions has existing relationships with over 20,000 such neighborhood retailers. This innovative distribution model is more practical and convenient for existing and potential Lifeline customers than other mechanisms, because it allows customers to obtain phones, service, and minutes without the expense and trouble of traveling to retail locations outside their neighborhoods or to having access to a computer to go online. Conexions' distribution arrangement will therefore advance the Commission's goals of increasing awareness of and participation in the Lifeline program.

The Community Action Partnership, a national network of more than one thousand local community action agencies that provide services aimed at improving the lives of low-income individuals and families, has expressed its support for Conexions' designation as an ETC.³³

³³ Letter from Don Mathis, President and CEO, Community Action Partnership, to Marlene Dortch, FCC, CC Docket No. 96-45 (filed Sept. 24, 2009).

In sum, ETC designation in the Non-Jurisdictional States would enable Conexions to provide all of the public benefits cited by the Commission in its analysis in the *TracFone* and *Virgin Mobile Orders*. Namely, Conexions would provide “increased consumer choice, high-quality service offerings, and mobility,”³⁴ as well as the safety and security of effective 911 and E911 services.³⁵

B. Impact on the Universal Service Fund

Conexions’ request for designation as an ETC solely for Lifeline purposes would not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. The secondary role of Lifeline support with respect to overall USF expenditures is well documented. According to the Joint-Board’s most recent monitoring report, Lifeline funding totaled approximately \$775 million in 2006 while high-cost program expenditures amounted to approximately \$4.1 billion—more than five times the amount of Lifeline funding.³⁶ Although many parties have raised concerns over the growth in the USF’s high-cost program, the Lifeline program has triggered no similar outcry. Limited designation of Conexions as an ETC in the Non-Jurisdictional States, however, raises no similar concerns and any incremental increases in Lifeline expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income consumers.

VII. ANTI-DRUG ABUSE CERTIFICATION

Conexions certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

³⁴ See *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38; *TracFone ETC Order*, 23 FCC Rcd at 6212 ¶ 15.

³⁵ See *Virgin Mobile Order*, 24 FCC Rcd at 3391 ¶ 23.

³⁶ See *Universal Service Monitoring Report*, CC Docket 98-202, Tables 2.2 and 3.1 (2008).

VIII. CONCLUSION

As discussed above, designation of Conexions as an ETC in the Non-Jurisdictional States accords with the requirements of Section 214(e)(6) of the Act and is in the public interest.

For all of the foregoing reasons, Conexions respectfully requests that the Commission designate Conexions as an ETC in the Non-Jurisdictional States.

Respectfully submitted,

CONEXIONS, LLC, d/b/a CONEXION
WIRELESS

By: 
Brian Cox
President
11121 Highway 70
Suite 202
Arlington, TN 38002-9230

October 7th, 2009

Exhibit 1
Conexions, LLC, d/b/a Conexion Wireless
Lifeline Rates

Lifeline Basic:

150 minutes per month

Free handset

Voicemail, Caller-ID, call waiting, three-way calling

Net cost to Lifeline customer: **\$0 (free)**

Lifeline Bronze:

300 minutes per month plus 3000 night/weekend minutes (starts at 7:00 pm)

Free handset

Voicemail, Caller-ID, call waiting, three-way calling

Net cost to Lifeline customer **\$16.49**

Lifeline Silver:

450 minutes per month plus 3000 night/weekend minutes (starts at 7:00 pm)

Free handset

Voicemail, Caller-ID, call waiting, three-way calling

Net cost to Lifeline customer **\$26.49**

Lifeline Gold:

600 minutes per month plus 3000 night/weekend minutes (starts at 7:00 pm)

Free handset

Voicemail, Caller-ID, call waiting, three-way calling

Net cost to Lifeline customer **\$36.49**

Exhibit A



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

**PINE BELT CELLULAR, INC. and PINE
BELT PCS, INC.,**

Joint Petitioners

**PETITION: For ETC status and/or
clarification regarding the jurisdiction
of the Commission to grant ETC status
to wireless carriers.**

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

DOCKET U-4400 - #2

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, in any respect, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

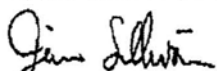
DOCKET U-4400 - #3

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

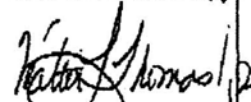

Walter L. Thomas, Jr., Secretary

Exhibit B



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

August 7, 2009

In reply, please refer to:

Docket No. 09-07-24:UR:PAP

L. Charles Keller, Esquire
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Docket No. 09-07-24 - Conexions LLC Seeks Designation as a Competitive Eligible Telecommunications Carrier

Dear Mr. Keller:

The Department of Public Utility Control (Department) acknowledges receipt of your July 10, 2009 letter filed on behalf of Conexions LLC (Conexions) seeking clarification as to whether the Department asserts jurisdiction to designate competitive eligible telecommunications carriers (CETC) in Connecticut. According to your letter, Conexions seeks designation as a CETC in Connecticut and believes that the Department does not assert jurisdiction to designate CETCs in the state and that carriers must apply to the FCC for certification.

The Department has reviewed your request and notes that it has approved requests for CETC status from wireline-based carriers. However, in the instant case, Conexions is a mobile virtual network operator. The Department does not regulate or license mobile carrier services' rates and charges and therefore, it is not subject to the Department's jurisdiction for the purposes of designating CETC status.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Kimberley J. Santopietro
Executive Secretary

Exhibit C



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247
FAX: (302) 739 - 4849

July 15, 2009

L. Charles Keller, Jr.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Ste. 700
Washington, DC 20037

RE: *Conexions LLC*

Dear Mr. Keller:

You have requested a statement confirming that the Delaware Public Service Commission ("PSC") lacks the jurisdiction to designate your client, Conexions, LLC ("Conexions"), as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e). You have represented that Conexions is a new mobile virtual network operator who seeks to participate in the FCC's Lifeline support program for qualifying low-income consumers.

Under state law, the Delaware PSC does not currently exercise any form of supervisory jurisdiction over wireless commercial mobile radio service ("CMRS") providers. *See* 26 *Del. C.* § 102(2) (excluding "telephone service provided by cellular technology, or by domestic public land mobile radio service" from the definition of "public utility"); 26 *Del. C.* § 202(c) (providing that the Delaware Commission has "no jurisdiction over the operation of domestic public land mobile radio service provided by cellular technology service or over rates to be charged for such service or over property, property rights, equipment of facilities employed in such service"). In fact, in granting ETC status in Delaware for Cellco Partnership d/b/a Bell Atlantic Mobile, the FCC accepted the Delaware PSC's confirmation at that time that it did not have jurisdiction under state law to designate CMRS providers as ETCs. *See Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rcd. 39 (2000), at ¶¶ 3-4. There have been no changes to state law regarding the PSC's authority over CMRS providers since the *Cellco* decision.

L. Charles Keller, Jr.
July 15, 2009
Page 2

I hope this addresses your request for confirmation that the Delaware Public Service Commission does not have jurisdiction under state law to designate CMRS providers, such as Conexions LLC, as an ETC.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce H. Burcat".

Bruce H. Burcat
Executive Director

Exhibit D



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpsc.org

July 22, 2009

Via First Class and Certified Mail

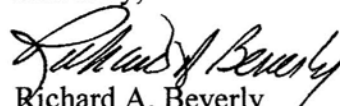
Mr. L. Charles Keller
Counsel for Conexions, LLC.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037

Dear Mr. Keller:

Thank you for your July 10, 2009 letter stating Conexions, LLC's ("Conexions") intent to be designated as an eligible telecommunications carrier in the District of Columbia. As you are aware, the Public Service Commission of the District of Columbia ("Commission") does not have jurisdiction over wireless carriers operating in the District of Columbia, pursuant to section 34-2006(b) of the District of Columbia Code. Thus, the Commission has no authority to designate Conexions as an eligible telecommunications carrier in the District of Columbia.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact me at 202-626-5140 or rbeverly@psc.dc.gov.

Sincerely,


Richard A. Beverly
General Counsel

Enclosure



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DC ST § 34-2006
Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness
Division V. Local Business Affairs

Title 34. Public Utilities. (Refs & Annos)

Subtitle V. Telecommunications.

Chapter 20. Telecommunications Competition. (Refs & Annos)

➔ § 34-2006. Exemptions.

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

(1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;

(2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;

(3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or

(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

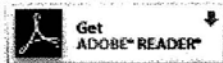
The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104- 104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through June 17, 2009

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Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpssc.org

July 22, 2009

Via First Class and Certified Mail


Mr. L. Charles Keller
Counsel for Conexions, LLC.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037

Dear Mr. Keller:

Thank you for your July 10, 2009 letter stating Conexions, LLC's ("Conexions") intent to be designated as an eligible telecommunications carrier in the District of Columbia. As you are aware, the Public Service Commission of the District of Columbia ("Commission") does not have jurisdiction over wireless carriers operating in the District of Columbia, pursuant to section 34-2006(b) of the District of Columbia Code. Thus, the Commission has no authority to designate Conexions as an eligible telecommunications carrier in the District of Columbia.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact me at 202-626-5140 or rbeverly@psc.dc.gov.

Sincerely,


Richard A. Beverly
General Counsel

Enclosure



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(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

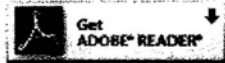
The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104- 104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through June 17, 2009

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Exhibit E

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COMMISSIONERS
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Amy L. Ignatius

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

September 22, 2009

L. Charles Keller
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Conexions, LLC

Dear Mr. Keller:

This is in response to your letter to the Commission, received July 10, 2009, concerning the above-referenced telecommunications carrier. You requested a statement from the Commission that Conexions, LLC (Conexions) is not subject to the jurisdiction of the Commission, inasmuch as this will affect how Conexions proceeds with efforts to become designated as an Eligible Telecommunications Carrier (ETC) for purposes of receiving universal service support pursuant to the federal Telecommunications Act.

You attention is directed to a published order of the Commission, *RCC Minnesota, Inc.*, 88 NH PUC 611 (2003) (Order No. 24,245). In that order, the Commission acknowledged that it lacks state-law authority to regulate wireless carriers, *id.* at 615, citing Section 362:6 of the New Hampshire Revised Statutes Annotated, and therefore the Commission concluded that the agency is likewise devoid of jurisdiction to consider a request for ETC designation from the carrier. In my judgment, Conexions as a user of both cellular and PCS (personal communications service) spectrum to provide commercial mobile radio service, may rely on the *RCC Minnesota* decision for the proposition that the Federal Communications Commission, as opposed to the New Hampshire Public Utilities Commission, is the appropriate agency to consider Conexions's bid for ETC status.

Please feel free to call me at 603-271-6005 if I can be of further assistance.

Sincerely,

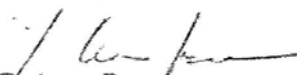

F. Anne Ross
General Counsel

Exhibit F

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

Chairman

PATRICIA L. ACAMPORA

MAUREEN F. HARRIS

ROBERT E. CURRY JR.

JAMES L. LARocca

Commissioners



PETER McGOWAN

General Counsel

JACLYN A. BRILLING

Secretary

September 1, 2009

L. Charles Keller
Wilkson Barker Knauer, LLP
2300 N Street, NW Suite 700
Washington, DC 20037

RE: Matter 09-01517/Case 09-C-0600 - Conexions LLC Request for Letter Clarifying
Jurisdiction over Wireless CETC

Dear Mr. Keller:

I am responding to your letter to Secretary Brilling, dated July 10, 2009 on behalf of Conexions LLC (Conexions). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service (CMRS) providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designation under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 et seq. You indicated that Conexions is a mobile virtual network operator ("MVNO") seeking designation as a competitive eligible telecommunications carrier ("CETC") in New York.

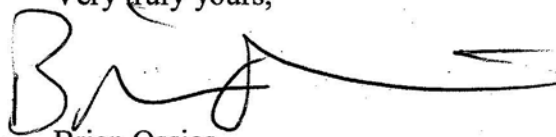
In response to your request, please be advised that the New York State Public Service Law §5 provides that:

Applications of the provisions of this chapter [the Public Service Law] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York State Public Service] commission...makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. Consequently, based on the representation by Conexions that it is a mobile virtual network operator ("MVNO") provider, Conexions would not be subject to the application of the Public Service Law and therefore, the jurisdiction of the New York Public Service Commission for purposes of making the Eligible Telecommunications Carrier designation.

As this letter is responsive to your request for a statement, Matter 09-01517/Case 09-C-0600 will be closed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Brian Ossias', with a long horizontal flourish extending to the right.

Brian Ossias
Assistant Counsel

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

Chairman

PATRICIA L. ACAMPORA

MAUREEN F. HARRIS

ROBERT E. CURRY JR.

JAMES L. LARocca

Commissioners



PETER McGOWAN

General Counsel

JACLYN A. BRILLING

Secretary

August 13, 2009

L. Charles Keller
Wilkinson Barker Knauer LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Case 09-C-0600 – Petition of Conexions LLC for a Declaratory Ruling
that the Company, a wireless telephone service provider, is not subject
to Commission jurisdiction

Dear Mr. Keller:

I am responding to your letter to Secretary Brilling, dated July 10, 2009, on behalf of Conexions LLC ("Conexions"). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over wireless telephone service providers for purposes of making determinations concerning eligibility for Competitive Eligible Telecommunications Carrier designations under 47 USC §214(e) and 47 CFR §54.201 et seq. You indicated that Conexions is a mobile virtual network operator in several states, including New York.

In response to your request, please be advised that the New York State Public Service Law §5(3) provides that:

Application of the provisions of this chapter [the Public Service Law] to one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York Public Service] commission, . . . makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

In addition, the New York State Public Service Law §5(6)(a) provides that:

Application of the provisions of this chapter [the Public Service Law] to cellular telephone services is suspended unless the [New York Public Service] commission, . . . makes a determination, after notice and hearing, that suspension of the application of the provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. Consequently, based on the representation by Conexions that it is a wireless telephone service provider, Conexions would not be subject to the application of the Public Service Law and therefore, the jurisdiction of the New York Public Service Commission for the purposes of making the Competitive Eligible Telecommunication Carrier designation.

As this letter is responsive to your request for a statement, Case 09-C-0600 will be closed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Saul M. Abrams", written in black ink.

Saul M. Abrams
Assistant Counsel

cc: Jaclyn A. Brilling, Secretary
Maureen Harris, Commissioner

Exhibit G

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) **ORDER GRANTING PETITION**

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23)). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-3(23)), enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

p20022003.01

Exhibit H

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

**APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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**DOCKET NO.
02-01245**

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴


The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

Exhibit I

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION DOCUMENT CONTROL
AT RICHMOND, APRIL 9, 2004

IN RE:

APPLICATION OF VIRGINIA CELLULAR LLC

6:34 APR -9 A 11: 46
CASE NO. PUC-2001-00263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.¹ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

¹ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").²

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.³

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.⁴ The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."⁵

² CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*.

³ See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.fcc.state.va.us/scc/caseinfo.htm>.

⁴ The FCC denied Virginia Cellular's request to redefine the study area of NTELOS. See paragraph 50 of the FCC's January 22, 2004, Order.

⁵ The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)

The Commission finds that interested parties should be afforded the opportunity to *comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW.* We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.⁶ However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

⁶ See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.

(3) On or before June 1, 2004, interested parties may file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to any person who filed comments or requests for hearing.

(4) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company licensed to do business in Virginia, as shown on Attachment A hereto; David A. LaFuria, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036; Thomas Buckley, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; Virginia Telecommunications Industry Association, c/o Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; L. Ronald Smith, President and General Manager, Shenandoah Telephone Company, P.O. Box 105, Williamsville, Virginia 24487; Lori Warren, Director of Regulatory Affairs, MGW Telephone Company, P.O. Box 459, Edinburg, Virginia 22824-0459; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.